

SENATE BILL REPORT

EHB 1385

As of March 26, 2009

Title: An act relating to sexual misconduct by school employees.

Brief Description: Modifying provisions relating to sexual misconduct by school employees.

Sponsors: Representatives Haler, Van De Wege, Kessler, Pearson, Takko, Klippert, Blake, Morrell, Dammeier, Warnick, Smith and Johnson.

Brief History: Passed House: 3/06/09, 81-14.

Committee Activity: Judiciary: 3/27/09.

SENATE COMMITTEE ON JUDICIARY

Staff: Brandon Roché (786-7405)

Background: Currently, a school employee is guilty of sexual misconduct with a minor in the first degree when the employee has sexual intercourse with a registered student of the school who is at least 16 years old and not married to the employee, if the employee is at least 60 months older than the student. Sexual misconduct with a minor in the second degree involves the same age qualifications but applies where there is sexual contact instead of sexual intercourse.

In *State of Washington v. Hirschfelder*, the Division II Court of Appeals held that this statute does not apply when the student is over the age of 18. The court relied on the legislative history of a series of bills that eventually led to the current statute. Of note to the court were the Legislature's and Governor's interpretation of the word "minor" throughout the process.

By statute, basic education programs must be accessible to students up to the age of 21.

Summary of Bill: A school employee is guilty of sexual misconduct with a minor in the first degree when that employee has sexual intercourse with a registered student of the same school who is at least 16 years old but less than 20 years old, if the employee is at least 60 months older than the student.

A school employee is guilty of sexual misconduct with a minor in the second degree if that employee has sexual contact with a registered student of the same school who is at least 16

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

years old but less than 20 years old, if the employee is at least 60 months older than the student.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.